Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 85, Original

STATE OF TEXAS,
Plaintiff,

VERSUS

STATE OF OKLAHOMA,
Defendant.

ANSWER

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April, 1980

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ANSWER

The State of Oklahoma, Defendant, by its duly elected, qualified and acting Attorney General, makes its Answer to the Complaint in this action brought by the State of Texas, Plaintiff, and states:

I.

The Defendant admits the allegations set forth in Paragraph I of the Plaintiff's Complaint filed and on file herein.

II.

The Defendant admits that the Plaintiff State of Texas was admitted to the Union by joint resolutions of Congress dated March 1, 1845 and December 29, 1845. 5 Stat. 797, 9 Stat. 108, respectively. The Defendant further admits that it was admitted into the Union by Act of June 16, 1906, 34 Stat. 267, ch. 3335. The Defendant would further allege and state that the southern boundary of the State of Oklahoma was established by virtue of the Treaty of

1819, 9 Stat. 252 (1821), as a part of the boundary between the United States and the possession of Spain on the North American Continent. The definition of the boundary, as contained in the Treaty, was construed by this Court in *United States* v. *Texas*, 162 U.S. 1, 16 S.Ct. 725, 40 L.Ed. 867 (1895). The southern boundary of Oklahoma is the "south cut bank" of the Red River as defined in *Oklahoma* v. *Texas*, 261 U.S. 340, 43 S.Ct. 376, 67 L.Ed. 687 (1923). This Treaty construction has been consistently followed in the various boundary disputes between the Defendant and Plaintiff. In *Oklahoma* v. *Texas*, 256 U.S. 70, 41 S.Ct. 420, 65 L.Ed. 831 (1921), this Court held that its decision in *United States* v. *Texas*, supra, was *res judicata* and binding upon the parties in any subsequent suit between the States of Oklahoma and Texas.

III.

The Defendant admits that on June 28, 1938, Congress enacted the Flood Control Act of 1938, 52 Stat. 1215, and that pursuant to such legislation, the construction of the Denison Dam was authorized by the United States Army Corps of Engineers. The Defendant further admits that the construction of Denison Dam began in 1939 and was completed by the United States Corps of Engineers in 1944. The Defendant neither admits nor denies the remaining allegations contained in Paragraph III of Plaintiff's Complaint for reason that it has insufficient knowledge as to the location of the south cut bank, the boundary established by the Treaty of 1819; and as to the location of the boundary below the Denison Dam, situated some three (3) miles southwest of Colbert, Bryan County, Oklahoma, for reason that the Red River was rechanneled and the De-

fendant has insufficient knowledge as to where the south cut bank of said river is presently situated in relation to the boundary as etsablished by the Third Report of The Boundary Commissioners (261 U.S. 340), and the Survey of 1908 by the United States Engineers' Office, Dallas, Texas, Red River Sheets 29, 30, 31, 32, 33, 34 and 35.

IV.

The State of Oklahoma, Defendant, neither admits nor denies the allegations of Paragraph IV of Plaintiff's Complaint for reason that it has insufficient knowledge as to the precise present location of the south cut bank of the Red River. Further, the Defendant asserts its territorial claims and sovereignty of and over all lands to the said south cut bank of the Red River and alleges that such boundary determination is as a matter of law *res judicata* in this instant action.

V.

The Defendant admits that the Federal Energy Regulatory Commission (FERC) is a federal agency empowered under the Federal Power Act, 16 U.S.C. § 824 (1976), to regulate sales of electrical power in interstate commerce. The Defendant further admits that under Docket No. EL-9578, the F.E.R.C. *inter alia*, is attempting to adjudicate the location of the boundary between the States of Oklahoma and Texas. The Defendant further admits that Plaintiff is a party-Intervenor in the F.E.R.C. and that the Defendant has not sought to intervene and is, therefore, not a party-Intervenor therein. The Defendant specifically denies that it has any duty or obligation to intervene in all F.E.R.C. proceedings and further denies that the F.E.R.C. is a compe-

tent forum to determine and decree the location of the boundary between the States of Texas and Oklahoma. The Defendant further alleges and asserts that the south cut bank of the Red River is as a matter of law *res judicata* as to the instant action, and that the Plaintiff herein has the burden of proof in showing any alleged change in such boundary due to accretion due to construction of the Denison Dam.

WHEREFORE, the Defendant, State of Oklahoma, respectfully requests that a decree be entered by this Honorable Court, in accordance with its historic precedents, declaring and determining the boundary between the State of Oklahoma and the State of Texas along the southern border of the Oklahoma counties of Marshall, Bryan and Love, and Grayson County, Texas, and that the State of Oklahoma be declared and determined to be the sovereign entitled by law to exercise jurisdiction and full dominion over all such area to the south cut bank of the Red River, and that the Plaintiff, State of Texas, has no sovereign right, title or interest in or to any of said lands or part thereof.

Respectfully submitted,

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